

**United States Department of Labor
Employees' Compensation Appeals Board**

HELEN A. KIBBLE, Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Iron Mountain, MI, Employer**

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**Docket No. 04-1061
Issued: August 5, 2004**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On March 15, 2004 appellant, through her attorney, filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated May 19, 2003 and February 18, 2004 finding that she failed to establish a recurrence of disability on or after August 15, 2002 causally related to her accepted employment injury of adjustment disorder with mixed anxiety and depressed mood. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on or after August 15, 2002 causally related to her accepted emotional condition.

FACTUAL HISTORY

On February 28, 2000 appellant, then a 46-year-old pharmacy technician, filed a notice of occupational disease alleging that she developed emotional and physical conditions due to a hostile work environment. The Office accepted appellant's claim by decision dated May 8, 2001 finding that she had implicated compensable factors of employment including overwork and anxiety regarding her ability to perform the duties of her position and that these factors caused or contributed to her diagnosed condition of adjustment disorder with mixed anxiety and depressed mood. The Office further found that appellant had not established harassment by her supervisor and that she had not established any period of disability due to this condition.

In a letter dated December 3, 2001, the Office accepted that appellant was disabled on October 25, 2000 and January 31, 2001 due to her accepted employment injury.

Appellant's attending physician, Dr. James A. Batti, a family practitioner, completed a report on February 4, 2002 and diagnosed anxiety. He stated that appellant was experiencing a lot of stress. In a note dated March 14, 2002, Dr. Batti diagnosed anxiety as well as myalgias and arthralgias of undetermined etiology.

Dr. Angela Seiter, a licensed psychologist,¹ completed a report on April 30, 2002 and indicated that appellant experienced intermittent periods of disability from January 25, 2000 to July 30, 2001 due to her accepted employment injury.

In a note dated August 15, 2002, Dr. Batti stated, "[Appellant] is extremely anxious and depressed and should not work for two weeks at least."

On August 15, 2002 appellant's supervisor, Daniel Aderman, stated that on that date he informally instructed appellant to limit her breaks to 15 minutes due to her practice of taking a 20- to 25-minute break shortly before she left for the day. He noted that later that day appellant informed him that she had scheduled a doctor's appointment.

The Office authorized additional compensation benefits intermittently from January 31, 2000 through July 30, 2001 due to the accepted employment injury by letter dated August 26, 2002.

Dr. Batti completed an additional note dated August 15, 2002 stating that appellant was very distraught, that she reported crying for the last two weeks and that she was seeking counseling. He diagnosed anxiety and repeated that appellant require two weeks off of work. On August 29, 2002 Dr. Batti recommended that appellant not return to work until after September 24, 2002.

¹ Although Dr. Seiter does not employ the term "clinical" in her title in accordance with section 8101(2) of the Federal Employees' Compensation Act, 5 U.S.C. §§ 8101-8193, the Michigan Rules governing the licensing of psychologists establish that she has received the highest degree of licensing under those rules and that she possesses a doctoral degree. Michigan Compiled Laws § 333.1101 *et seq.* In accordance with the Office's procedures, she is considered a licensed clinical psychologist. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Overview*, Chapter 3.100.3.a (October 1990).

Dr. Seiter completed a report on August 14, 2002 noting that appellant appeared distraught and tearful and that she expressed a feeling of hopelessness regarding her job situation. She submitted a report dated October 16, 2002 diagnosing worsening stress and anxiety-related problems as well as severe depression. Dr. Seiter stated that appellant should be given time off work when she deteriorated due to stress. She stated that she recommended that appellant stay home from work on January 25, February 10 and 11, 2000, March 12, July 11 and November 30, 2001 as well as January 24, March 11, April 16, May 14, May 30, July 24, August 8, 9 and 15, 2002.

Dr. Batti completed a narrative report on September 23, 2002 and diagnosed fibromyalgia,² hypertension, anxiety and depression. He attributed these conditions to work-related stress due to interpersonal relationships and continual overwork. He stated that appellant should remain off work for an additional three months. On November 25, 2002 Dr. Batti again diagnosed fibromyalgia and anxiety and stated that when appellant thought of returning to work she experienced anxiety attacks. He stated that appellant should remain off work for the next six months.

By letter dated December 10, 2002, the Office authorized intermittent periods of compensation for disability from August 27, 2001 to October 18, 2002. The Office also informed appellant that if her work stoppage on August 15, 2002 was due to the discussion with her supervisor regarding breaks that this would constitute a new employment injury.

Appellant filed a notice of recurrence of disability on December 22, 2002 alleging that on August 14, 2002 she experienced a recurrence of disability causally related to her February 16, 2000 employment injury.³ Appellant stated that following her return to work she was unable to perform her duties such as filling medication carts due to her high stress level. She stated, "In doing duties, unable to concentrate and the constant pressure of producing more has elevated my stress level, again I believe because of the original stress claim, I have become sensitized by my work assignments that has caused this recurrence." On the reverse of the form, Mr. Aderman indicated that appellant performed full duty upon her return to work following her initial claim and he also stated that the vacant pharmacy technician position was filled.

In a letter dated March 19, 2003, the Office requested additional factual and medical evidence in support of appellant's claim for recurrence of disability. The Office noted that the factual and medical evidence in the record suggested that additional employment events caused or contributed to appellant's current condition.⁴

² The Office denied appellant's claim for fibromyalgia and bursitis due to standing on a cement floor, the stress of being short staffed and her workload by decision dated September 3, 2002 under a separate claim number not currently before the Board.

³ Appellant filed a duplicate claim for recurrence of disability on November 2, 2003 alleging a recurrence of disability on August 14, 2002 stating that she was unable to perform her duties due to a high stress level, and that she became sensitized due to her original stress claim.

⁴ The Office references an August 14, 2002 treatment note from Dr. Seiter which allegedly stated, "[Appellant] found out she didn't get the job." The record before the Board does not contain such a note.

Dr. Batti completed a report on April 4, 2003 stating, "The constant expectation of her increased duties as a pharmacy technician causes significant exacerbation of her anxiety resulting in increased physical symptoms from her fibromyalgia, GERD, [gastrointestinal esophageal reflux disease] chronic fatigue syndrome, elevated blood pressure and arthritis." He noted that appellant's stress and anxiety was substantially increased when performing her assigned duties of repackaging medication and mixing intravenous fluids. In an additional report dated April 2003, Dr. Batti stated that appellant's condition was chronic and had been exacerbated by her job duties. He opined, "The stress factor complicates any further relief from her anxiety disorder/depression" and concluded that appellant was totally disabled beginning August 15, 2002.

Appellant responded to the Office's request for factual information on April 3, 2002 asserting that she was extremely distraught due to continuous overwork, not to either the failure to obtain a different position or the discussion with her supervisor on August 15, 2002. Appellant stated that the disagreeable interpersonal relationships as described by Dr. Batti were implicated in her original claim. She stated:

"What happened prior to my work stoppage was that we were still short staffed due to a retirement that was never replaced, therefore many of her duties I had to shoulder. Also another technician was about to retire in less than two weeks. There was no one to help and some days it was impossible to get work done but there was the constant pressure to have it accomplished.... It became an accumulative pressure of trying to accomplish everything my supervisor wanted completed along with the expectation of other coworkers. This continuous unrelenting stress/anxiety just became overwhelming to the point that I felt that I could no longer function."

By decision dated May 19, 2003, the Office denied appellant's claim for a recurrence of disability finding that she had not established a spontaneous return of her symptoms or disability without any intervening work factors. The Office stated that if appellant felt that her current condition was the result of additional employment exposures she could file an additional claim for an occupational disease.

Appellant, through her attorney, requested an oral hearing on May 21, 2003, which was changed to a review of the written record. In a report dated May 25, 2003, Dr. Batti diagnosed severe anxiety and attributed appellant's severe stress due to "the paperwork for being off work." On May 28, 2003 he again stated that appellant was under a great deal of stress and that this stress was causing physical problems.

By decision dated February 18, 2004, the hearing representative conducted a review of the written record and affirmed the Office's May 19, 2003 decision.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her recurrence of disability commencing

August 15, 2002 and her February 28, 2000 employment injury.⁵ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁶

A recurrence of disability is defined as an inability to work after any employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁷ The Office's procedure manual specifically excludes a work stoppage due to a condition which results from a new injury to the same part of the body previously injured or by renewed exposure to the causative agent of previously suffered occupational disease. In those cases, the procedure manual requires that an appropriate new claim form should be completed. The procedure manual further states, "However, in some occupational disease cases where the diagnosis remains the same but disability increases, the claimant may submit [a notice of recurrence of disability] rather than filing a new claim." The exception to this provision is emotional stress cases in which a new claim should always be required.⁸

ANALYSIS

The Office accepted that appellant sustained an emotional condition, adjustment disorder with mixed anxiety and depressed mood due to the compensable factors of overwork and anxiety regarding her ability to perform the duties of her position. Appellant returned to full duty following this injury with intermittent periods of disability. She alleged that she sustained a recurrence of total disability on August 15, 2002 due to her accepted employment injuries. Due to a request for additional factual evidence, appellant submitted a narrative statement and attributed her current condition to continuous overwork, the constant pressure to accomplish her job duties, short staffing at the employing establishment, the prospect that another coworker would retire and the expectations of her coworkers.

Appellant has attributed her current emotional condition to renewed exposure to the causative agent of her accepted occupational disease claim, additional exposure to overwork. She has also alleged additional factors of employment, including pressure to accomplish her job duties and short staffing. By definition, appellant has not alleged a recurrence of disability. The definition of recurrence found in the Office's regulations, necessitates a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁹ The Office's procedure manual excludes a work stoppage caused by renewed exposure to the causative agent of a

⁵ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

⁶ *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁷ 20 C.F.R. § 10.5(x).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b.(2)(e) (May 1997).

⁹ 20 C.F.R. § 10.5(x).

previously suffered occupational disease from the definition of a recurrence of disability. As appellant's current claim does not fall within the definition of a recurrence of disability due to additional employment exposures, the Office properly found that appellant had not established a recurrence of disability and denied her claim.¹⁰

Furthermore, the medical evidence does not support a spontaneous return of appellant's symptoms of anxiety or depression. Dr. Batti completed a note dated August 15, 2002 diagnosing anxiety. However, he failed to provide any history of injury or statement of causal relationship.

Dr. Seiter completed a report on August 14, 2002 noting that appellant expressed a feeling of hopelessness regarding her job situation. She submitted a report dated October 16, 2002 diagnosing worsening stress and anxiety-related problems as well as severe depression. While this report mentions appellant's employment, Dr. Seiter did not provide a history of injury or an opinion that appellant's current condition was due to either her accepted employment factors or was a spontaneous return of her accepted condition.

Dr. Batti completed a narrative report on September 23, 2002 and diagnosed fibromyalgia,¹¹ hypertension, anxiety and depression. He attributed these conditions to work-related stress due to interpersonal relationships and continual overwork. As Dr. Batti noted continual overwork, he has implicated that appellant had additional employment exposures rather than a spontaneous return of the symptoms of her accepted condition. On November 25, 2002 Dr. Batti again diagnosed fibromyalgia and anxiety and stated that when appellant thought of returning to work she experienced anxiety attacks. Again this statement implicates an additional alleged employment factor rather than supporting a recurrence of disability.

Dr. Batti completed a report on April 4, 2003 stating, "The constant expectation of her increased duties as a pharmacy technician causes significant exacerbation of her anxiety resulting in increased physical symptoms from her fibromyalgia, GERD, chronic fatigue syndrome, elevated blood pressure and arthritis." He noted that appellant's stress and anxiety was substantially increased when performing her assigned duties of prepacking medication and mixing intravenous fluids. In an additional report dated April 2003, Dr. Batti stated that appellant's condition was chronic and had been exacerbated by her job duties. He opined, "The stress factor complicates any further relief from her anxiety disorder/depression." In a report dated May 25, 2003, Dr. Batti diagnosed severe anxiety and attributed appellant's severe stress due to "the paperwork for being off work."

¹⁰ The Office properly advised appellant that she could file a new claim for occupational disease due to the additional employment exposures alleged including overwork. The Office did not and was not obligated to adjudicate appellant's claim for a recurrence of disability as a new occupational disease claim based on its procedures and the claim forms filed by appellant. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences* Chapter 2.1500.3.b.(2)(e) (May 1997); *but cf. Philip L. Barnes*, 55 ECAB ____ (Docket No. 02-1441, issued March 31, 2004) (in which the Board found that the Office properly adjudicated a claim for recurrence as a new claim for an emotional condition).

¹¹ The Office denied appellant's claim for fibromyalgia and bursitis due to standing on a cement floor, the stress of being short staffed and her workload by decision dated September 3, 2002. *See supra* note 2.

These reports do not establish that appellant's current emotional condition occurred as a result of a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. Dr. Batti described various alleged employment factors due to exposures to the work environment which the Office accepted as causing appellant's initial illness. Therefore, his reports do not establish a recurrence of disability and are not sufficient to meet appellant's burden of proof.

CONCLUSION

The Board finds that appellant and her physicians attributed her current emotional condition to additional employment exposures to overwork and that therefore her claim cannot be adjudicated as a recurrence of disability. The Office properly found that appellant had not established that her current condition was a spontaneous recurrence of her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the February 18, 2004 and May 19, 2003 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: August 5, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member